

will be no further rollcall votes during today's session.

Mr. BOND. Mr. President, I thank the assistant majority leader for advising us that we won't have to continue the frenetic pace of voting this evening. I look forward to working with him. He is a pleasure to work with. Maybe tomorrow we will be able to go forward.

I was going to offer some thoughts on the intent of FISA, but I will defer to my colleague from Georgia if he has further points he wishes to raise.

Mr. CHAMBLISS. Mr. President, I am happy to yield to the vice chairman if he has prepared comments he intends to make. If I have something to supplement that, I will do so.

FISA

Mr. BOND. Mr. President, I thank my colleague from Georgia. I thought maybe, if anybody is still listening, we would talk a little bit about the intent of the Foreign Intelligence Surveillance Act. I hope maybe we can clarify some of the misunderstandings.

First, I believe that when the distinguished Senator from California, a valued member of the committee, Mrs. FEINSTEIN, spoke on the origins of FISA, she correctly noted that it was created, at least in part, in response to the disclosed abuses of domestic national security surveillance. However, as the legislative history makes clear, FISA was never intended to regulate the acquisition of the contents of international or foreign communications where the contents are acquired by intentionally targeting a particular known U.S. person who is in the United States.

The legislative history states:

This bill does not afford protections to U.S. persons who are abroad, nor does it regulate the acquisition of the contents of international communications of U.S. persons who are in the United States, where the contents are acquired unintentionally. The Committee does not believe this bill is the appropriate vehicle for addressing this area. The standards and procedures for overseas surveillance may have to be different than those provided in this bill for electronic surveillance within the United States, or targeted against U.S. persons who are in the United States.

In essence, then, FISA, as originally drafted, was a domestic foreign intelligence surveillance act. Congress was concerned about targeting persons inside the United States with interceptions conducted inside the United States.

The FISA Act amendments legislation we are considering today is a very different animal, and it could be better characterized as an international foreign intelligence surveillance act. The bill is concerned mainly with targeting persons outside the United States when interception might occur inside the United States. What do I mean by that? The legislation will regulate how the President may conduct electronic surveillance of foreign terrorists operating in foreign countries when their

communications just happen to pass through the United States on wire communications networks.

This strange interference with the intelligence community's and, indeed, the President's authority to conduct foreign intelligence activities appears to arise from an overabundant concern about the "rights" of persons in the United States whose communications are incidentally collected when they talk to terrorists overseas.

It is odd that we are creating a new law in this area that departs from the original construct of FISA because in the international surveillance realm, there have been no significant abuses of the intelligence community's ability to collect overseas foreign intelligence.

Unfortunately, two factors have compelled us to make these changes to FISA. First, we need to ensure that the critical intelligence gaps identified by the DNI last year do not reappear.

The Protect America Act effectively closed those gaps last summer, but there was bipartisan agreement that we could improve on its provisions, especially in the area of carrier liability protection, and that is what our committee did.

Second, this legislation is also required because we must address the practical reality that electronic communications service providers are now insisting on a formal process to compel cooperation in the foreign arena in order to obtain prospective liability protection similar to that enjoyed for domestic intelligence and criminal wiretaps. That is why the carrier liability protection and prospective liability protection provisions of this bill are so important.

Another area where we are departing from the original intent of FISA is the targeting of U.S. persons abroad. FISA, as passed in 1978, left the targeting of American citizens abroad to the President's Executive order applicable to the intelligence community and the procedures approved by the Attorney General. In this legislation for the first time in history, we build into the FISA new laws that govern the targeting of U.S. persons overseas who are agents, officers or employees of foreign powers when a significant purpose of the acquisition is to obtain foreign intelligence information.

These new procedures are sometimes referred to as 2.5 procedures because they are based in part upon section 2.5 of Executive Order 12333, which has long governed the electronic surveillance of U.S. persons overseas by requiring the approval of the Attorney General based upon a finding of probable cause that the target is a foreign power or agent of a foreign power.

These 2.5 changes were part of the overall bipartisan compromise and now require prior court review by the Foreign Intelligence Surveillance Court of all surveillance conducted by the U.S. Government targeting U.S. persons overseas. Americans will still be on their own with respect to being

surveilled by foreign governments overseas, but at least they can remain confident that if they are not working for a foreign power as a spy or terrorist, their own Government will not be listening to their conversations.

The last area that merits discussion on the issue of FISA's original intent is the Foreign Intelligence Surveillance Court. We refer to it as the FISC. According to section 103 of FISA, the FISC was established as a special court with nationwide jurisdiction to "hear applications for and grant orders approving electronic surveillance anywhere within the United States." That is it.

As evidenced by the application and order requirements in FISA, each application is for a "specific target" for the significant purpose of obtaining foreign intelligence information.

The court was originally structured so its seven judges would provide geographical diversity. The post-9/11 expansion of the FISC from 7 to 11 judges enhanced that diversity. Judges are nominated by the chief judge of their circuit to promote ideological balance on the FISC.

It was clearly recognized that only one or two judges would be in Washington, DC, on a rotating basis at any given time. This was intended to discourage judge shopping and make it unlikely that an application for the extension of an order would be heard by the same judge who granted the original order.

The FISC was never envisioned as a court that would or should handle protracted litigation. It possesses neither the staff nor the facilities to preside over such litigation. Moreover, it is very likely that such prolonged litigation would interfere with the main business of the FISC, which is to ensure the timely review and approval of individual operational FISA applications for court orders.

We need to remember that the FISC was set up to review domestic electronic surveillance and later physical searches, an area that has numerous parallels to the similar reviews conducted by district court judges when they are asked to authorize criminal wiretaps. As I mentioned previously, even the FISC has acknowledged its lack of expertise in the foreign-targeting context, which is, they say, better left to the executive branch.

The Court's recent opinion in the case of *In re: Motion for Release of Court Records* stated:

... even if a typical FISA judge had more expertise in national security matters than a typical district court judge, that expertise would still not equal that of the Executive Branch, which is constitutionally entrusted with protecting the national security.

We should be very hesitant to disregard the Court's own assessment of its competency in the overseas intelligence realm, especially given the original intent of FISA. I urge all my colleagues to be mindful of the Court's own words as we consider some of the

proposed amendments, particularly those that would allow the court to assess compliance with minimization procedures used to target foreign terrorists. For example, amendment Nos. 3920 and 3908, and would require the court to determine the good faith of those providers who allegedly assisted the Government with the Terrorist Surveillance Program. As examples, amendment Nos. 3919 and 3858.

In conclusion, I offer these observations mainly to ensure the record reflect the legislation departs from FISA's original intent in a deliberate and carefully tailored manner. While there are some practical considerations, including a desire for a strong bipartisan bill, that have driven the need for this legislation, we should be extremely careful about adding new or changing existing provisions in the bill that could negatively impact the operational effectiveness of our intelligence community or provide unwarranted protection to overseas terrorists and spies.

Mr. President, I will not propound a unanimous consent request now, but I advise my colleagues that if we cannot reach agreement, I will ask unanimous consent that all amendments to the FISA bill be brought up and decided at a 60-vote threshold so we can move forward on this important legislation. I am not making that request now. I alert my colleagues on the other side of the aisle, I hope that will not be necessary, but we have not had a response to our proposal on how we move forward. We have been at this a week now, and we only have, at best, two full working weeks before we go on recess. We must get this bill done, sent to the House, conferenced, and passed before we leave for the President's Day recess. Failure to do so could leave our intelligence community without the tools they need and, thus, America without the protection it needs.

I yield the floor.

THE PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Colorado.

ADDRESSING THE ISSUES

Mr. SALAZAR. Mr. President, when we looked back at the work of this Chamber at the end of 2007, we saw this Chamber coming together in a bipartisan way to garner what was 82 votes for the passage of the 2007 farm bill. It is an example of Republicans and Democrats working together to address a fundamental need of America, and that is the issue of food security.

Last night, we heard the President of the United States address the Nation on the state of the Union, in which one of the things he talked about was the importance of moving forward with an economic stimulus package. That economic stimulus package, which has been negotiated at least with the House of Representatives on a bipartisan basis, is another example of when people are willing to work together, we can actually get some business done.

That is what we should be doing in this Chamber today. We should be working through amendments with respect to improving the Foreign Intelligence Surveillance Act in order for us to get that legislation finally approved. What we are up against, frankly, is an unwillingness on the part of the Republican minority to allow us to move forward to get to final passage of this bill in a way that would consider relevant and germane amendments that would make it better, in a way that would address the absolute need to protect the cherished civil liberties of Americans.

Those are the kinds of amendments with which we ought to be dealing. But instead, we are faced with a filibuster.

I hope we can act on this legislation and then move on to the urgent needs the people of America have brought us here to work on, on their behalf. We heard the President last night talk about the economic issues that face America.

In my view, when I look at my State of Colorado, I believe the economy is skating on very thin ice. We see it in a lot of different ways. We see it in rising gas prices. We see it in the extraordinary health care costs people have to pay. We see it with respect to the housing crisis we are facing in my State and across America.

When I think about my State, maybe it is a small State in comparison to the great States of New Jersey, New York, and others, but there are 5 million people in my State who I believe are very concerned with what is happening with housing in Colorado. That is because 1 out of every 376 homes today in the State of Colorado is in foreclosure. If 1 out of 376 homes is in foreclosure today, I would venture that probably 90 percent of the homes in Colorado have seen a very significant decline in their value over the last 2 years.

So, yes, the people of America are very nervous about what is happening with the economy, and it is our responsibility, therefore, to move forward with an economic stimulus package that will address that economic uncertainty. I am hopeful that with the leadership of Senator BAUCUS and Senator GRASSLEY and my colleagues on the Finance Committee, we will be able to get to a markup of legislation that can reach the floor of the Senate tomorrow evening, perhaps the next day, that will be that jump-start to the economy we need.

There is broad agreement on what that legislation will do. It will put money into the pockets of the consumers of America so it can help stimulate the economy. It will create initiatives for small businesses, which are so much of the economic engine of America, to go out and invest in equipment and growth so we can create jobs for people of this country.

We will move forward with a package that will also include extending unemployment benefits and also include in that making sure 20 million seniors who were left out of the House stimulus package are also included.

There will be other provisions that will come forward. So it is important we get beyond the legislation we are dealing with now with respect to FISA so we can work on those short-term economic issues. And having worked on those economic issues, which I hope we are able to do in a bipartisan fashion, then we will have the opportunity, hopefully, to work on the other legislation that addresses the longer term security needs of America.

In that long-term economic set of issues I believe we have to address, we have to, first of all, get the farm bill which garnered, I believe, 82 votes in the Senate, across the finish line so we can guarantee the food security of America for generations to come. It is the best farm bill, in my view, that has come out of this Senate Chamber, out of Congress for a long time. I think my Republican and Democratic colleagues would agree with that characterization of the farm bill.

We need to move beyond the farm bill to also address other long-term economic issues that face us. We must address the issue of the clean energy future for America. Yes, we can celebrate the fact that we came together in a bipartisan way to pass the Energy bill which the President signed in December, that we did a lot to move forward with efficiency and transportation and how we use electricity and other energy in our homes and buildings, a very significant step forward in embracing the new future with biofuels for America with the quintupling of the renewable fuel standards, and we took some steps to start dealing with the issue of global warming by putting carbon sequestration in that bill. But there is a lot more to be done on energy because what is missing in that bill, and still missing today, is a jet engine that will power us into the 21st century clean energy economy, because the legislation we passed out of the Finance Committee was one vote short to get to the 60 votes to stop the filibuster that was underway.

We need to turn back to the energy legislation so we can build that long-term economic security for America.

We also have to deal with the housing crisis. We will deal perhaps with it in some minor ways when we deal with the stimulus package, but there are other pieces of legislation which a number of committees have been working on to try to deal with the housing crisis. So we need to deal with both the short-term and the long-term economic challenges we face here in America, and yet we are wrapped around the axle in terms of moving forward on this FISA bill because the Republican minority has taken the view that we can simply stall, stall, stall until the time runs out.

I think we ought to be working in good faith, consider the amendments that many of my colleagues have brought to this floor and which are being prevented from being considered so we can then get a FISA bill passed